

**Meeting Minutes for Fast Track Workgroup  
October 28, 2003, 12:00 PM to 2:30 PM  
IGCN, OAQ Training Room**

**Attendance:**

Bill Beranek (IEI ), Bowden Quinn (WPCB), and Neil Parke (Eli Lilly), John Chavez (City of Indianapolis), Yan Hartkemeyer (Indianapolis Clean Stream Team), Tim Blagsvedt (Indianapolis Clean Stream Team), and Joe Watson (City of Indianapolis). Art Umble (City of Elkhart) joined by way of conference call.

IDEM representatives: Mary Ellen Gray, John Elliott, Dave Kallander, John Nixon, Lonnie Brumfield, and MaryAnn Stevens

**Purpose of Workgroup**

The purpose of this workgroup is to review the list of expedited rulemaking issues that the Triennial stakeholder workgroup identified and come to closure on the process for an expedited rulemaking. This list was identified by the Triennial stakeholder group to include changes based on best science, updates of existing rule language, and technical corrections and clarifications that have a reasonable potential of minimal controversy.

**Minutes**

The minutes of the October 9, 2003 workgroup meeting were accepted by the workgroup members and will be placed on the fast track web site.

**First Notice**

The first notice was published in the Indiana Register on June 1, 2003, and the comment period ended July 30, 2003. Five comment letters were received during the comment period. Comments will be summarized and responses will be provided by IDEM staff. The "Response to Comments" document will be published in the Indiana Register with the draft rule at second notice.

**Discussion of the draft rule and status documents**

Discussion at this meeting included the following:

1. John Elliott began discussions on the subject of developing WQBELs for Whole Effluent Toxicity (WET) within the Great Lakes system by saying EPA has left it up to the states to decide their own approaches. The options are:
  - (1) use the Technical Support Document (TSD) which has to some degree been the existing Indiana approach; or
  - (2) follow the example of the other Region 5 states where WET is made to be equal to the Waste Load Allocation (WLA).Using Option (2), listed above, the daily maximum limit would be equal to the acute WET WLA and the monthly average limit would be equal to the chronic WET WLA. John indicated there is little difference in the numbers derived from the two approaches.

Another aspect of the discussion is whether the same choice made for the Great Lakes dischargers should also be applied to the downstate dischargers. Neil Parke commented that there is no legal obligation for downstate dischargers to meet the requirements that would be imposed by either of the approaches. Currently, downstate discharge permits contain limits for individual pollutants but not for WET, and, as Neil pointed out, if a permittee fails a WET test, the permittee must conduct a toxicity reduction evaluation (TRE).

John Chavez stated his concern with having a permit limit on WET because failure to meet the WET limit is a permit violation. He asked how a discharger corrects violations of WET since it is not related to a specific pollutant parameter. Neil Parke doesn't think WET limits for downstate dischargers is a fast track issue though he concedes the issue may be addressed in another rulemaking. Neil asked if downstate dischargers get both acute and chronic limits in their permits. John Elliott responded that some dischargers get both depending on the dilution ratio.

Neil pointed out that Option (2) could result in both acute and chronic WQBELs for WET so a discharger's toxicity monitoring costs could double because both acute and chronic toxicity tests would have to be conducted. This led Bill Beranek to say the rule choice should be Option (2) if there can also be discretion to have only one limit, either acute or chronic but not both.

IDEM concluded that for the non-Great Lakes dischargers, there will be no changes to the current rule for a WET RPE determination but a WET limit could be included if the discharger violates narrative water quality criteria.

2. Discussion about the non-Great Lakes WET provisions in 327 IAC 2-1-8.2 and 327 IAC 2-1-8.3 for determinations of Acute Aquatic Criterion (AAC) and Chronic Aquatic Criterion (CAC): The possible options are:
  - (1) as shown in the 8-13-03 draft of rule language, include specific narrative criteria for WET with numeric interpretation and remove the WET provisions in sections 8.2 and 8.3 from the rule; or
  - (2) do not include specific narrative criteria for WET in the rule, remove the WET provisions in sections 8.2 and 8.3 from the rule, and rely solely on the narrative criteria.

John Elliott has a concern that removing the WET provisions in sections 8.2 and 8.3 might compromise the basis for the biomonitoring program requirements if specific narrative criteria for WET are not included in the rule.

John Nixon stated that the state's authority is more sound if there is a numeric in the rule.

Neil Parke voiced objection to having a numeric limit in the discharge permit because of the opportunity for daily permit violations.

John Chavez asked what environmental benefit could come from including a numeric WET limit in the permit.

Mary Ellen Gray stated having the numeric interpretation included in the rule gives IDEM a process to follow.

Neil Parke said he sees a need to remove the WET provisions in sections 8.2 and 8.3 from Article 2 and place them in Article 5.

Bowden Quinn stated that BCCs within the Great Lakes system are a big issue because the Great Lakes are a closed system. He sees no reason to delay dealing with the WET issue since it isn't a BCC. Art Umble agreed with Bowden. Neil Parke and John Chavez want the issue pushed back to a later rulemaking.

3. Free cyanide and how to monitor for NPDES compliance purposes:  
Neil Parke gave information about Method 1677 approved under 40 CFR 136 for analyzing available cyanide that EPA says actually measures free cyanide. There is also a new free cyanide method called the Ligand Method that EPA is expected to approve in the near future. EPA's contractor working on developing the method is Dale Rushnick (970-223-2013) and the EPA staff who reviews analytical methods is Bill Telliard (202-566-1061).  
John Elliott said that despite the existence of Method 1677 there is no guidance from EPA as yet about whether it can be used to measure free cyanide.  
The concern is that cyanide metal complexes can dissociate instream releasing free cyanide; therefore, an effluent without free cyanide is not a determinant of no free cyanide available in the stream.  
John Elliott intends to talk with EPA about whether they would approve a method for free cyanide for NPDES compliance purposes.  
John Chavez asked if IDEM would modify all discharge permits if the standard is changed to free cyanide. The answer was that it is IDEM's standard procedure not to change a permit limit such as total cyanide to a free cyanide limit until it is permit renewal time or unless a discharger requests a modification to its NPDES permit. Also, before this change could be made, antibacksliding would have to be evaluated.  
It was also mentioned that the human health criterion is 200 mg/l for total cyanide at the point of drinking water intake.
4. Mary Ellen Gray presented the proposal regarding sulfates that IDEM has developed for inclusion in the draft rule. She indicated the proposal is open for discussion. In order to move this rulemaking along taking into consideration the concerns stated by interested parties on the sulfate issue, IDEM proposes to include an interim sulfate limit in this rulemaking and keep the sulfate issue as an element to be considered in the future "Fast Track Part 2" rulemaking that is intended to be initiated following this Fast Track rulemaking. The interim limits IDEM proposes are: 250 mg/l at drinking water intakes and 1000 mg/l outside the mixing zone. IDEM has not asked EPA's opinion on these limits but will be following up with them. As well, there is a need to look at the ability to use these limits in the Great Lakes system.  
Neil Parke provided a comment paper on the draft rule language from the Indiana Water Quality Coalition.
5. John Elliott presented two examples of potential rule language to include in 327 IAC 2-1-8.1(b) concerning the calculation of criteria for metals in the form of dissolved metal. Subsection (b) says the commissioner could consider allowing the expression of aquatic life criteria for a specific metal in the form of total recoverable metal rather than dissolved metal which is the recommended approach. Of the two examples of rule language, the workgroup agreed the more

detailed language was preferred. That suggested language spells out that one of the following will be used to make the determination:

- (1) if sufficient toxicological data in the form of dissolved metal are available then they are to be used to develop an aquatic life criteria;
- (2) if sufficient toxicological data in the form of dissolved metal are not available but a conversion factor approved by the commissioner is available for converting the total recoverable form of the criteria to the dissolved metal form, then it is to be used; or
- (3) if sufficient toxicological data in the form of dissolved metal are not available and a conversion factor approved by the commissioner is also not available, then the aquatic life criteria is to be derived in the total recoverable metal form.

Also, in Example 1, at the end of subsection (b) in the existing rule language, the group decided to delete "as follows" and replace it with " one of the following

6. Discussion about including a similar requirement for the downstate dischargers as currently exists in the Great Lakes system rules concerning the need to public notice a discharger's request for a site-specific criteria.

Bowden Quinn wants the public notice requirement to be statewide while the regulated community does not.

Neil Parke presented the Indiana Water Quality Coalition's (WQC) interpretation of the Alaska Rule as not requiring Indiana to include site-specific criteria in rules because the EPA approval of Indiana's GLI rulemaking came after the adoption of the Alaska Rule.

Dave Kallander said the EPA and IDEM interpretation does not agree with the WQC but IDEM will present the WQC interpretation to EPA for its consideration.

NOTE: There needs to be further discussion on Tier I criteria and Tier II values under the site-specific issue.

7. Neil Parke had the following specific comments on the 8-13-03 draft rule:

- (1) 327 IAC 2-1-6(a)(2)(A)(iii) and (iv):

Neil questions the choice of "or" after deleting "and/or".

- (2) 327 IAC 2-1-9 definition of "endangered or threatened species":

Neil asked if a date of the ESA needs to be in the rule.

- (3) 327 IAC 2-1-9 definition of "occur at the site":

Neil asked for clarification in clause (B) of the life stage being considered.

- (4) Neil reminded the workgroup that the regulated community has the same concerns about fluoride as it has concerning sulfates. Though the sulfate issue has been dealt with, IDEM has not yet discussed the fluoride issue in the workgroup.

#### Follow up issues

- Put the workgroup minutes of the October 9, 2003 meeting on the Fast Track web site.

#### Future Meeting Dates

The next meeting is scheduled for November 24, 2003, from 9:00 to 11:30 A.M. in Conference Room D on the twelfth floor of the Indiana Government Center North building.

Next Meeting issues

- Continue review of the draft rule and status documents with the goal to have the draft rule submitted to the Legislative Services Agency by December 10, 2003 for publication of second notice of comment period in the Indiana Register on January 1, 2004.